IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.3114 of 2007 (O&M)
Date of Decision: 01.12.2012

Dharam Singh

..... Appellant

versus

Gurdev Singh and others

..... Respondents

Coram: Hon'ble Mr. Justice Ajay Tewari

Present: Mr. Rajinder Singh Dhaliwal, Advocate
for the appellant.

None for respondent No.1.

Mr. M.K. Singla, Advocate
for respondent No.2.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Ajay Tewari, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit filed by the respondents for specific performance of an agreement to sell dated 10.08.2000 executed by the respondent No.3. Instead of making sale deed in their favour he made a subsequent sale deed in favour of the appellant.

The plea of the appellant was that he was a bona fide purchaser. However, he never even entered into the witness box and consequently both

the Courts below held that he was not a bona fide purchaser. Before this Court on 10.12.2007 this appeal was disposed of in terms of a compromise which had been entered into by the respondent No.1 with the appellant. Thereafter, the respondent No.2 moved an application for recalling the order dated 10.12.2007 on the ground that he had never signed the compromise nor had he engaged the learned counsel who had appeared on his behalf. Mr. I.S. Brar, Advocate appeared had accepted the fact in Court that he had been engaged only by respondent No.1 and had never been engaged by respondent No.2. Thereafter, the order dated 10.12.2007 was recalled and the appeal has now been heard.

In the present appeal, the following questions of law have been proposed:-

> *"i) Whether the concept of compromise permissible and acceptable during the civil litigation at any stage?*
>
> *ii) Whether the courts below have appreciated the evidence placed on record?*
>
> *iii) Whether the courts below are justified in discarding the application for the dismissal of the suit by one of the plaintiff moved by the appellant?*
>
> *iv) Whether the Lower Appellate Court is duty bound to give findings on all the issues whereas the Ld. Lower Appellate Court has only discussed issue Nos.1, 5 and 10?*
>
> *v) Whether the appellant-defendant is a bonafide purchaser and is protected U/s 41 of the Transfer of Property Act?*
>
> *vi) Whether the Judgment and Decree under challenge can be allowed to be proceeded in view of the*

compromise dated 25.07.2007 (Annexure A-1)?

vii) Whether the Judgment and Decree of the Courts below are liable to be set aside and the appeal is to be accepted on the basis of compromise which is being placed on file by way of additional evidence as Annexure A-1?"

Questions No.(i), (vi) and (vii) deal with compromise. In this regard an application for additional evidence had been filed whereby a third compromise had also been sought to be placed. Learned counsel for respondent No.2 states that respondent No.2 had never entered into any compromise and if this document had actually been signed on 03.12.2007 as is shown thereon it would definitely have been put on record on 10.12.2007 when the appeal was originally compromised. Learned counsel for the appellant has not been able to give any explanation as to why this document was not placed on record on or before 10.12.2007 when the appeal was originally decided. The earlier compromise has already been disbelieved (when this appeal was restored). In the circumstances, the said compromises are rejected. Once the compromises placed on record by the appellant have been rejected, questions No.(i), (vi) and (vii) are answered against him.

Questions No.(ii), (iv) and (v) are general questions of fact. Learned counsel for the appellant has taken me not only through the findings of the Courts below but also through the entire oral and documentary evidence but has not been able to persuade me that the findings of fact recorded by the Courts below are either based on no evidence or based on such a perverted misreading of evidence so as to

justify the interference of this Court under Section 100 of the Code of Civil Procedure.

As regards question No.(iii), it cannot be denied that Gurdev Singh, respondent No.1 had indeed compromised his share in the dispute. Therefore, this question is answered in favour of the appellant qua respondent No.1 but answered against the appellant qua respondent No.2.

Resultantly, the appeal qua half the property (the interest of Gurdev Singh, respondent No.1) is accepted and the appeal qua remaining half of the property (the interest of Major Singh, respondent No.2) is dismissed. No costs.

(AJAY TEWARI)
JUDGE

December 01, 2012
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